

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**



To be argued by  
ROSEMARY CARROLL

76-7306

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PAMELA SCHNEIDER, PATRICIA WHITE, MARIE  
MYRTIL, JANE ROE AND LYNN ANN TYLER, on  
behalf of themselves and their minor  
children and all others similarly situated,

Plaintiffs-Appellees,

BETTI S. WHALEY, individually and as  
Commissioner of the Agency for Child  
Development of the City of New York;  
J. HENRY SMITH, individually and as  
Commissioner of the Human Resources  
Administration of the City of New York;  
and PHILIP TOIA, individually and as  
Commissioner of the Department of  
Social Services of the State of New York,

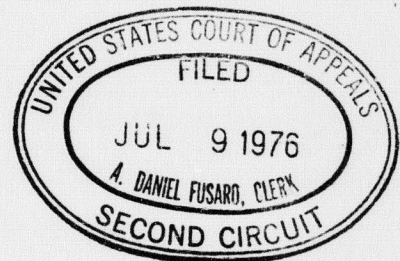
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF NEW YORK

ORIGINAL

B

P/s



MUNICIPAL APPELLANTS' BRIEF

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Plaintiffs-Appellees,

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Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK

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MUNICIPAL APPELLANTS' BRIEF

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STATEMENT

The municipal appellants appeal from an order of the United States District Court for the Southern District of New York (CANNELLA, J.), entered on July 1, 1976, which granted plaintiffs' application for a preliminary inunction and denied the defendants' motion to dismiss the complaint. The order enjoined the defendants from defunding various day care programs prior to holding a group hearing or a series of group hearings, which hearings would be attended by parents of children attending the defunded day care programs.

On July 2, 1976, the municipal defendants moved before this Court for a stay of the District Court order. The motion was denied on that date and the appeal was ordered to be heard on an expedited schedule.

#### QUESTION PRESENTED

In response to the City's fiscal crisis, the Agency for Child Development (hereafter ACD) was required to reduce its budget by sixteen percent. After evaluating the various alternative methods of reducing the budget, ACD determined that the best way to comply with the fiscal constraints would be to defund 49 day care programs and seven mini-family day care programs and partially defund fifteen day care centers. After a study by ACD of day care centers using city funding, ACD, on June 1, sent notices of the intended closings to each day care center scheduled for termination. Members of the Board of Directors of the Centers who requested conferences to discuss defundings met with representatives of ACD prior to July 1, 1976. At about the same time, approximately 72% of the parents using the defunded centers were notified in writing of the closings and requested to indicate their acceptance or declination of alternative placements. The assistant to the interim director of ACD stated in an affidavit that the remaining 28% of the children using defunded facilities would be placed in an alternative facility by August 31, 1976. The following question is presented:

Where the evidence before the District Court shows

that each of the children using the defunded day care facilities would be placed in an alternative facility within two months after the defunding, and that Centers who requested conferences to dismiss the defunding met with representatives of ACD prior to the defunding on July 1, 1976, did the lower court, relying on the Due Process Clause, abuse its discretion in granting a preliminary injunction requiring the Agency for Child Development to hold a group hearing or series of group hearings before defunding certain day care centers in response to an undisputed fiscal crisis?

#### FACTS

##### (1)

On July 1, 1975, the Agency for Child Development of the City of New York, a division of the Human Resources Administration of the City of New York created to administer day care services in New York City, had a program budget from all sources of approximately \$165 million. [A 77,78].\*

Due to the fiscal crisis in the City of New York affecting all levels of government, the program budget for ACD was reduced to \$157 million in mid-1975-76 fiscal year. As a result of this cut, twenty eight (28) day care centers were closed due to budgetary crisis

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\*Unless otherwise indicated, references in parentheses preceded by the letter A refer to pages in the Joint Appendix.

on or about January, 1976. [A78].

The 1976-1977 program budget for ACD has further been reduced to \$126.2 million. This budget includes \$10 million that day care centers must raise through independent activities. Thus, the available program funds for ACD in fiscal year 1976-77 is \$116.2 million representing a 22.5% deficit in funds needed to operate the system at its pre - fiscal year 1976-77 level [A78,86].

Pursuant to Title XX of the Social Security Act, (42 U.S.C. 1397 et seq.) the Federal Government will reimburse 75% of the expenditures of the City of New York for all Title XX Programs which may or may not include day care services up to a maximum of \$150 million. New York State reimburses 12 1/2% of these Titles XX Program expenditures. Prior to and in the midst of the current fiscal crisis, New York City is expending in excess of the \$150 million reimbursement ceiling established by the Federal Government for Title XX programs. The budget cuts which are the subject of this suit are an effort to bring New York City's Title XX Program expenses within the reimbursement ceiling and thereby permit the city to take advantage of maximum federal reimbursement [A78,79].

Prior to June 1, 1976 and after evaluating all available alternatives, ACD concluded that the best way to comply with the fiscal constraints imposed upon it by state and city officials was to totally defund forty nine (49) day care program and seven (7) mini-family

care programs and partially defund fifteen (15) day care centers effective July 1, 1976 [A78,79].

The selection of the centers to be defunded was made only after a thorough analysis of the entire ACD budget concluded that defunding day care programs was unavoidable. As part of this analysis, ACD completed an exhaustive study of all day care centers receiving city funding. Projections of total savings required to comply with the budgetary reductions were established and apportioned to service areas on the basis of present service levels and percentage of total ACD caseload by each area. Profiles of all ACD funded programs were prepared and meetings were held between budget, executive, program, facilities and field staff of ACD to select a body of candidates for defunding in each service area. [A79,80].

After these meetings were concluded, ACD staff through a process utilizing such factors as center utilization rates, per capita costs, availability of alternate placement, facility quality and other indicators developed a list of those centers to be recommended for defunding [A79, 80,102-113].

After the initial list of defunding recommendations were complete, final recommendations were made by top-level ACD staff and the Administrator of the Human Resources Administration of the City of New York, J. Henry Smith, based upon their recommendations, authorized

and directed the defundings which are the subject of this suit [A79,80].

Once a listing of intended closings was developed, ACD on or about June 1, 1976 sent out notices of intentions to close the selected day care programs. Meetings were held between ACD staff and over thirty (30) sponsoring boards of the centers recommended for defunding. Some parents were in attendance at these meetings. The purpose of the meetings and the discussions which transpired were centered on explaining the reasons for defunding and the criteria used in making the specific determinations (A79). The ACD stands ready to have similar conferences with all defunded program sponsors. Some of these day care boards are composed of parents of children participating in the day care program [A79,90-94].

At or about the same time as meetings with sponsoring boards were being held, notices of the proposed closings were sent to parents of children who were in attendance at centers scheduled for defunding [A79]. These notices, indicating the fiscal crisis as the reason for defunding, set forth alternate placements for the children affected by the defundings and asked the parent to indicate acceptance or declination of the alternative placement [A79,95-101].

The selection of alternate placements for the children involved was made with geographic considerations receiving the highest priority [A83]. By the date of

scheduled defunding (June 30, 1976), 72% of all of the children in attendance at the defunded centers have been offered placement in other day care programs. The remaining 28% will be placed in other programs on a continuing basis with all of the subject children being placed by August 31, 1976 [A83].

The method by which ACD developed the priority for placement of the subject children in other day care programs considered the needs of the child and the parent for immediate placement as of primary importance. Child welfare cases and children of currently employed parents were given top priority [A82-83, 134-142].

(2)

The complaint alleges a class action on behalf of approximately 3500 parents of children who attend day care centers scheduled to be defunded by ACD effective July 1, 1976 [A57].

Plaintiffs claim in the First, Second and Third Counts of the complaint that the defundings of the subject day care centers represent a denial, reduction and termination of day care services to the parents of the children in attendance and that the failure to afford plaintiffs a "fair hearing" as described in state and federal regulations violates state and federal law as well as the Due Process Clause of the United States Constitution [A57,58,65,66,67].

Plaintiffs allege in the Fourth and Fifth

causes of action that the removal of day care services to plaintiffs while such services continue to be offered to other eligible persons in the same geographic area violates the Equal Protection Clause of the United States Constitution as well as federal statutes and regulations [A58,67,68].

Plaintiffs allege in the Sixth Count that the proposed defundings violate federal statutes and regulations in that the defundings are, in fact, an amendment to the Comprehensive State Plan under Title XX of the Social Security Act which require public notice before such amendment and that said notice was not given [A58, 68,69].

Plaintiffs requested injunctive relief to halt the defunding of the subject centers (1) until such time as parents have received a "fair hearing" as described in state and federal regulations; (2) until all persons in the same geographic areas and category receive similar day care services; (3) until the defendants give public notice of amending their state plan [A70,71].

The complaint also requested damages.

(3)

On June 21, 1976 plaintiffs, by Order to Show Cause, applied for a preliminary injunction in the United States District Court, Southern District of New York to halt the June 30, 1976 scheduled complete or partial defundings of the subject day care centers until such

time as each parent involved was permitted to seek and obtain a "fair hearing" as prescribed in certain federal and state statutes and regulations and by the United States Constitution [A77].

On June 25, 1976, all parties appeared before Judge John Cannella and argument was held on plaintiffs' application for injunctive relief. Judge Cannella reserved decision on plaintiffs' application for a preliminary injunction.

The affidavit of Richard Asche, attorney for plaintiffs, submitted in support of plaintiffs' request for injunctive relief, stated that the United States Constitution, federal and state statutes and regulations require a "fair hearing", as described in 45 CFR §205.10 and 228.14, for each plaintiff parent prior to defunding [A5]. The plaintiffs will be irreparably harmed in that working parents will be forced to leave their employment, children will be abruptly cut off services, centers will close and staff will be lost [A5,6]. It is stated that the sole injury to defendants will be a brief delay until the "fair hearings" are held [A6].

The affidavits of Richard Asche and Mable Dean, a member of the Leadership Committee of the Day Care Legal Action Coalition, state that a survey, by the Leadership Committee of most of the defunded centers and some parents found that as of June 19, 1976, only 28% of the parents involved were contacted by ACD with respect to alternate

placement for their children [A8,18,19]. It is also stated that only a few of the alternate placements offered to parents are adequate [A8,9,19].

Affidavits of two named plaintiff parents state that no alternate day care placement has been offered and that none other than the present center to which their children are sent would be adequate [A39,40,53,54].

Other affidavits of parents submitted in support of the request for injunctive relief state that the alternate placement offered is inadequate [A41,42,45,46,47,48].

Peter Sauer, in an affidavit, offered an alternative plan by which it is alleged that ACD can meet its budgetary restraints [A21-35].

## OPINION BELOW

(1)

At the beginning of its opinion the Court granted the plaintiffs' motion to denominate the action as a class action (A193).

With respect to the merits, the Court found that a hearing, in which the parents of children using the subject centers participate, is not required by the applicable regulations contained in 45 C.F.R. §205.10 et seq (A195).

The Court then discussed whether the parents, who utilize the centers sought to be closed, have a due process right to "some sort of hearing or opportunity to present evidence and argument, prior to the closings" (A196). The Court, after reviewing the relevant statutes, 42 U.S.C. §1397a and New York State Social Services Law §410, found that the plaintiffs have "acquired a specific and legitimate expectation that they will be able to send their children to a day care center." (A197). The Court recognized that due process varies with the nature of the interest involved (A203). It concluded that the appropriate procedure is a group hearing or a series of group hearings during which the parents will be given an opportunity to present their views and information to ACD (A208).

As to the balance of hardships, the Court found that the financial injury to the defendants did not justify taking action in violation of the due process clause. The Court noted that numerous members of the plaintiffs' class had demanded a hearing the preceding several weeks prior to the determination of ACD to defund certain facilities. Under such circumstances the Court stated that the balance of equities was in favor of the plaintiffs (A108).

(2)

The order, entered on July 1, 1976, required ACD to give the parents 5 calendar days' notice of the group hearing. After the group hearing, ACD is required to submit to the plaintiff and personally serve on their attorneys its written decision "articulating the facts underlying and the reasons for its decision after the hearings at least two (2) business days prior to effectuating such decisions" (A212).\*

\*It is anticipated that the group hearing will be held on July 12, 1976. The expedited appeal schedule precludes us from delaying the submission of this brief until after the group hearing and the decision by ACD. We will inform this Court of any events relevant to the appeal which occur after the submission of this brief.

## ARGUMENT

THE ORDER OF THE DISTRICT COURT GRANTING THE PRELIMINARY INJUNCTION WAS AN ABUSE OF DISCRETION AND CONTRARY TO LAW. THERE IS NO CONSTITUTIONAL OR STATUTORY RIGHT TO DAY CARE SERVICES. WHERE THE EVIDENCE SHOWS THAT EACH OF THE CHILDREN USING DAY CARE FACILITIES, WHICH HAVE BEEN DEFUNDED, WILL BE PLACED IN AN ALTERNATIVE FACILITY AT THE LATEST BY AUGUST 31, 1976, TWO MONTHS AFTER THE DEFUNDING, AND WHERE CONFERENCES HAVE BEEN HELD WITH DAY CARE SPONSORING BOARDS, DUE PROCESS DOES NOT REQUIRE THE AGENCY FOR CHILD DEVELOPMENT TO GIVE A GROUP HEARING ATTENDED BY PARENTS OF CHILDREN PARTICIPATING IN DEFUNDED PROGRAMS, PRIOR TO DEFUNDING CERTAIN DAY CARE CENTERS IN RESPONSE TO AN UNDISPUTED FISCAL CRISIS.

(1)

On appeal from an order granting a preliminary injunction the issue before the appellate court is whether the lower court abused its discretion. American Federation of Musicians v. Stein, 213 F. 2d 679, 683 (6th Cir., 1954), cert. den. 348 U.S. 873 (1954). "Although the granting or denial of a preliminary injunction is within the discretion of the court to which it is addressed, where it is plain that the disposition was in substantial measure a result of the lower court's view of the law, which is inextricably bound up in the controversy, the appellate court can and should review such conclusions (citing case)." Societe Comptoir De L' Industire Cotonniere Establishments Bonssac v. Alexander's Dept. Stores, Inc., 299 F. 2d 33, 35-36 (2d Cir., 1962).

A preliminary injunction should not be granted unless the plaintiffs have demonstrated with "reasonable

certainty that it must succeed at a final hearing" Unicon Management Corp. v. Koppers Company, 366 F. 2d 199, 204 (2d Cir., 1966); Packard Instrument Company v. ANS, Inc., 416 F. 2d 943, 945 (2d Cir., 1969).

It is our position, as will be shown below, that neither the United States Constitution nor the applicable federal and state statutes, require the defendants to grant the affected parents a group hearing before defunding certain day care centers as a result of a fiscal crisis where ACD has established a plan that, within a short time after the defunding, provides for the transfer of all of the children to alternative day care facilities.

(2)

The lower court, relying upon the decisions of the Supreme Court in Goldberg v. Kelly, 397 U.S. 254 (1970), and Board of Regents v. Roth, 408 U.S. 564 (1972), found that due process required the parents to be given a group hearing before defunding.

In Goldberg v. Kelly, 397 U.S. 254 (1970), the Supreme Court held that the Due Process Clause required that a welfare recipient be afforded an evidentiary hearing before the termination of benefits. In distinguishing welfare benefits from other types of governmental benefits which may be terminated without a hearing, the Court stated (397 U.S. at p.264):

"For qualified recipients, welfare provides the means to obtain essential food, clothing, housing and medical care

(citing case). Thus the crucial factor in this context - a factor not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental entitlements are ended - is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. (emphasis ours).

In Board of Regents v. Roth, 408 U.S. 564 (1972), the court recognized that procedural due process would apply where the interest is within the Fourteenth Amendment's protection of property. In discussing the concept as it applied to public employment, the Court stated (408 U.S. 577):

"Property interests, of course, are not created and their dimensions are defined by existing rules or misunderstandings that stem from an independent source such as state law - rules or understanding that secure certain benefits and that support claims of entitlement of those benefits."

The Court concluded that while Roth did have an interest in his job, the interest was not sufficient to require a hearing. (408 U.S. at p.578).

Recently, the Supreme Court in Bishop v. Wood, \_\_\_\_ U.S. \_\_\_\_ 44 U.S.L.W. 4820, June 8, 1976, elaborated on its decision in Roth and again noted that only substantial property interests explicitly created under state law are entitled to the protection of the Due Process Clause.

Applying the principles established by the

Supreme Court in Goldberg, Roth and Bishop, it is submitted that ACD, in response to a fiscal crisis, is permitted to close certain day care centers and transfer the children to alternative centers.

In Goldberg, the welfare recipient was deprived of mandated benefits which provided the means of survival. Unlike Goldberg, in this case, the plaintiffs are not being deprived of mandated financial assistance needed by them to survive.

With respect to Roth, the parents of children using the defunded services have not shown any entitlement to services at a particular facility as a result of any state law or regulation. See Our Children's Day Care Center v. Whaley, N.Y.L.J., (2d Dept., 1976), N.Y.L.J. (May 5, 1976), p. 12 col. 3, where the Appellate Division upheld the termination of funding of certain day care centers for fiscal reasons without affording the parents a hearing prior to termination.

Nor is there any statutory requirement that funds available under Title XX to participating states be used for the provision of day care services. The State Plan must outline the services intended to be provided and subject such proposed program to public comment. However, there is no mandate that day care services be provided at all as part of the plan or that a particular level of services be provided. See 45 C.F.R. §§204.1, 205.5 et seq. It is not disputed that there have never been funds sufficient to provide day care services to all eligibles. Historically,

there have been waiting lists for day care programs in New York City. See McKinney's New York Social Services Law §401(1). It is noteworthy that the New York State Emergency Financial Control Board has found that Title XX does not require the provision of day care services at all and that the expenditure of 70% of the Title XX funds for day care services to 2% of the population should be examined especially in light of the fiscal crisis.

In any event ACD has not yet disputed the plaintiffs-parents entitlement or their continued eligibility for day care service. ACD has made provision for the transfer of children in defunded facilities to alternative day care programs. By June 30, 1976, 72% of the children in defunded programs will be placed in alternative facilities (A83). Alternative placements will be affected for the remaining children by August 31, 1976 (A83). If the parents of the transferred children are unhappy with the alternative facility, the parents can proceed with their individual claims in a fair hearing procedure required by Sections 228.14 and 205.10 of title 45 of the Code of Federal Regulations. See also 18 N.Y.C.R.R. 358. Such individual claims can arise after the children have been transferred to the alternative facility. Cf. Burr v. New Rochelle Municipal Housing Authority, 479 F. 2d 1165 (2d Cir., 1973) (tenants affected by rent increases); Caramico v. Secretary of H.U.D., 509 F. 2d 694 (2d Cir., 1974) (tenants in danger of eviction).

The requirement of a group hearing or any other type of hearing in which the parents participate is inappropriate where ACD is required to make a policy decision regarding<sup>1</sup> a reduction in budget in response to an undisputed fiscal crisis. The procedure used by ACD in determining how the budget should be reduced properly revolved around the officials in ACD, whose expertise would be most relevant in making such policy determinations. The selection of the centers to be defunded was made only after a thorough analysis of the entire ACD budget (A78, 79). ACD then completed an exhaustive study of day care centers utilizing city funding (A79,80). The review process is set forth above, supra pp.4-6. After a listing of intended closings was prepared, ACD sent notices of closing to each day care program (A79 ). Meetings were held between the ACD staff and over 30 sponsoring boards recommended for defunding (A79). These day care sponsoring boards, in part, are composed of parents of children serviced by the day care programs. The purpose of the meetings was to explain the reasons for the defunding and the criteria used in making the specific determination (A79).

This procedure has been upheld in Windham v. City of New York, 405 F. Supp. 872 (S.D.N.Y., 1976), where the parents of children in centers that had been defunded in January, 1976 as a result of the fiscal crisis alleged that they had a constitutional right to a hearing

before their children were transferred from the closed facility. In dismissing the motion for a preliminary injunction, the Court found that the parents do not have a statutory or other right to receive services from a specific center.

The Court stated (405 F. Supp. at p.876):

"The plaintiffs have no statutory or other right to receive services from a specific day care center. Since ACD asserts that substitute services will be made available to them, plaintiffs have not yet been deprived of any benefits to which they may be entitled.

Some reduction in services available to plaintiffs may be inevitable, however, if only because the plaintiff center was the only facility in the area which offered night-time services. Nonetheless, the statutory entitlement of the parents and their children appears to be a flexible one; not surprisingly, the statute authorizing the program limits the services to be provided to these for which 'funds have been made available' N.Y. Soc. Serv. Law 401(1) (McKinney 1966). Thus a reduction in services, where compelled by absence of funds available to ACD for the day care program at a particular facility, would apparently not ground a constitutional right to a hearing."

In this case at bar, it cannot be disputed that ACD is not challenging the eligibility of any child who is attending one of the centers which will be defunded. In fact, as in Windham, a large majority of all such children have been offered other day care facilities prior to the defunding date, June 30, 1976. As of the date of this brief, the number continues to rise. With respect to the remaining children all will be offered

placement on or before August 31, 1976. In Windham as in the case at bar, there was a brief hiatus between the date of defunding and the receipt of alternate placement for some of the children. This circumstance did not prevent the Court from holding that no due process hearing was required prior to the defunding.

In the instant case, Judge Cannella agreed that Windham was directly in support of the defendants position but declined to follow it (A203). The Court stated that its conclusion was in accord with Gasaway v. McMurray, 356 F. Supp. 1194 (S.D.N.Y., 1973). In Gasaway, one day care center was terminated for cause, i.e. ACD charged the center with gross fiscal irregularities. The Court found that the granting of a due process hearing was warranted because of the stigma to the members of the center resulting from the charges. The Court also found that a hearing was warranted because the alternative day care center to which the children were transferred was overcrowded and therefore the transfer would result in a "cessation of services". 356 F. Supp. Ct. p. 1198. To the extent that Gasaway is relevant to this case, it is submitted that it is wrong\*.

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\*The City of New York appealed the order in Gasaway, Docket No. 73-1778. After briefs were filed by both sides, this Court, in response to a motion by the appellees, dismissed the appeal on the ground of mootness.

(3)

Judge Cannella cited three New York State regulations, Sections 459.6(a)(1), 459.10(c) and 459.15 to support his determination that the parents had a property interest in the day care services (A200). The regulations are set forth in the opinion of the District Court (A200). These regulations relate only to the day to day operations of day care programs as to children who are eligible, and who are receiving service at a center. These regulations do not affect the authority of a municipality and a state to reduce or increase the size or scope of its day care program. As we noted above, day care service is not a program mandated by the federal government. The scope of the program is determined by the availability of funds. The state plan, which describes the day care program in New York City, is subject to revision and review.

(4)

Before a preliminary injunction can be granted, plaintiffs must show that they would suffer irreparable harm and that, in the balancing of hardship, the equities favor the plaintiff. Checkers Motors Corporation v. Chrysler, 405 F. 2d 319, 323 (2d Cir., 1969). The continuance of the preliminary injunction would prevent ACD from complying with the fiscal reductions mandated by the Mayor as part of the emergency financial plan required to avoid municipal bankruptcy. The continuation of the injunction will require additional budget reductions in

the day care program for every week that the injunction remains in effect. The additional cost when translated into loss of day care services means that, for every week this injunction remains in effect, ACD will have to permanently defund other additional day care centers. In addition federal reimbursement of day care expenses depends on utilization and attendance at the individual centers. The proposed reduction in the number of centers and the shift of children to other centers will bolster our reimbursement rate and lessen the fiscal emergency.

In contrast to the irreparable harm to the City of New York, the discontinuance of the preliminary injunction will not result in irreparable harm to the plaintiffs. As noted above 72% of the children affected by these defundings would be placed in alternative day care programs by June 30, 1976 and the remaining 28% will be placed in alternative programs by August 31, 1976 (A83).

(5)

It is submitted that the lower court erred in not granting defendants' motion to dismiss the complaint. The applicable rule is that, if the plaintiff has not stated a claim for relief and cannot state such a claim, the complaint should be dismissed. See Standard Oil Company of Texas v. Lopeno Gas Company, 240 F. 2d 504, 510 (5th Cir., 1957). If, as we contend, the plaintiff's are not entitled to a hearing prior to defunding, the complaint should be dismissed.

CONCLUSION

THE ORDER GRANTING A PRELIMINARY  
INJUNCTION SHOULD BE REVERSED. IN  
ADDITION, THE COMPLAINT SHOULD BE  
DISMISSED.

July 9, 1976.

Respectfully submitted,

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Appellants.

LEONARD KOERNER,  
JOSEPH F. BRUNO,  
ROSEMARY CARROLL,  
of Counsel.

STATE OF NEW YORK :

SS:

COUNTY OF NEW YORK:

Allenston James

being duly sworn, says that on the 9 day of July, 1976  
at No. 180 B'WAY in the Borough of MAN'H. in NEW YORK CITY, he  
served <sup>3 COPIES</sup> ~~a copy~~ of the annexed BRIEF upon LITTMAN, FRIEDMAN, etc. Es  
the Attorney for the PLTFFS - APPLS. in the within entitled action  
by delivering a copy of the same to a person in charge of said Attorney's office  
and leaving the same with him.

Sworn to before me this 9 :  
day of July, 1976

BRUCE S. GARNER  
Commissioner of Deeds  
City of New York - No. 4-1786  
Commission Expires May 1, 1978

Bruce Garner

Allenston James

STATE OF NEW YORK :

SS:

COUNTY OF NEW YORK:

Allenston James

being duly sworn, says that on the 9 day of July, 1976  
at No. 61 B'WAY in the Borough of MAN'H. in NEW YORK CITY, he  
served <sup>3 COPIES</sup> ~~a copy~~ of the annexed BRIEF upon BLUM + KAMINSKY Esq  
the Attorney for the PLTFFS - APPLS. in the within entitled action,  
by delivering a copy of the same to a person in charge of said Attorney's office,  
and leaving the same with him.

Sworn to before me this 9 :  
day of July, 1976

BRUCE S. GARNER  
Commissioner of Deeds  
City of New York - No. 4-1786  
Commission Expires May 1, 1978

Bruce Garner

Allenston James

STATE OF NEW YORK :

SS:

COUNTY OF NEW YORK:

Bruce Garner

being duly sworn, says that on the 9 day of July 19 76  
at No. 61 B'way in the Borough of Man in NEW YORK CITY, he  
served a copy of the annexed manuscript upon William H. Korman Esq.  
the Attorney for the Plaintiff in the within entitled action  
by delivering a copy of the same to a person in charge of said Attorney's office  
and leaving the same with him.

Sworn to before me this 9  
day of July 19 76

JAMES BURNS  
Commissioner of Deeds  
City of New York - No. 4-1787  
Commission Expires May 1, 1978

Bruce Garner  
James Burns

STATE OF NEW YORK :

SS:

COUNTY OF NEW YORK:

Bruce Garner

being duly sworn, says that on the 9 day of July 19 76  
at No. 120 B'way in the Borough of Man in NEW YORK CITY, he  
served a copy of the annexed manuscript upon Frederick S. Lott Esq.  
the Attorney for the Plaintiff in the within entitled action  
by delivering a copy of the same to a person in charge of said Attorney's office  
and leaving the same with him.

Sworn to before me this 9  
day of July 19 76

JAMES BURNS  
Commissioner of Deeds  
City of New York - No. 4-1787  
Commission Expires May 1, 1978

Bruce Garner  
James Burns